

## CANADIAN ENVIRONMENTAL LAW ASSOCIATION

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Chairman, Committee of Government Representatives  
on Civil Society Participation  
c/o Tripartite Committee (Civil Society)  
UN Economic Commission for Latin America and the Caribbean  
(ECLAC)  
1825 K St. NW, Suite 1120  
Washington, DC 20006

### **BY FAX**

Dear Sir:

The Canadian Environmental Law Association, founded in 1970, is an environmental law clinic which provides legal services to individuals and groups, initiates law reform, and conducts public education. We have analyzed trade policy, including free trade and investment agreements, since 1988, have provided advice to Canadian parliamentary committees, attended at the OECD regarding the Multilateral Agreement on Investment and have engaged with issues of trade, environment, and development at the WTO since 1994.

In the ten years since Canada and the United States entered into the Free Trade Agreement, the global legal regime of the trade agreements (FTA, NAFTA, and WTO) has had an increasing impact on public policy in Canada. We share the concerns of citizens throughout the hemisphere that the trade law regime has serious negative effects on public policies, including protection of the environment and human health, social and labour policies; resource management and conservation, and sustainable development.

We understand that the proposed FTAA process will parallel and be consistent with the agreements of the WTO.

The NAFTA and WTO chapters regarding standard-setting (the Sanitary and Phytosanitary Standards and Technical Barriers to Trade chapters) are now serious negative constraints on domestic environmental and health policy making, and the Sanitary and Phytosanitary Standards provides to investors to sue governments for unlimited and unjustifiable claims of expropriation. We are attaching a document prepared regarding the Multilateral Agreement on Investment, entitled "the Multilateral Agreement on Investment and Environmental Regulatory Powers", as it is pertinent to deregulated investment within NAFTA, and any proposed hemispheric expansion of NAFTA-like terms.

Significantly, OECD negotiators and European diplomats, when informed of the ramifications of the NAFTA investment chapter and investor-state claims, did not support the completion of the MAI. My colleague, Ken Traynor, is sending you by email the reports of two European government officials which identify the concerns which led to the demise of the MAI. The reports are by Jan Huner, secretary to the Chair of the OECD negotiating committee on the MAI, and Mme. Catherine Lalumiere, the French parliamentarian whose analysis led to the withdrawal of the French from MAI negotiations.

With regard to the NAFTA investment chapter, you may be aware that concerns about its impacts have led the Canadian government to initiate discussions with the NAFTA parties to limit some of the impacts of the chapter.

We urge governments to consider these reports and initiatives seriously before endorsing an FTAA investment deregulation agreement, and not expand such a model throughout the Americas.

Further, we urge governments to develop expanded mechanisms for further substantive engagement with citizens across the hemisphere as negotiations proceed, including transparency of negotiating texts and opportunities for public comment and debate with governments throughout the coming months.

Yours sincerely,  
CANADIAN ENVIRONMENTAL LAW ASSOCIATION

MICHELLE SWENARCHUK  
Counsel and Director of International Programmes

Attachments.

## 1. CANADIAN ENVIRONMENTAL LAW ASSOCIATION (CELA)

The Canadian Environmental Law Association was formed in 1970 to use environmental law to *protect* the environment, and to work to improve environmental laws. Since 1987, we have analyzed and written on the impacts on environmental law and policy flowing from international trade agreements. CELA is located In Toronto.

## 2. ENVIRONMENTAL IMPACTS

The International discussions of the MAI have raised questions of whether it will have Impacts on the environment. After nearly ten years of free trade regimes in Canada, we are in a position to conclude that it certainly will. It is intended to have impacts on various areas of public policy, Including environmental policy.

The MAI Is the latest In a network of International agreements being used to undermine local, national, provincial and International Initiatives for various public policy goals, through the creation of a legal regime of deregulated trade and deregulated investment. The goal is achieved by regulating national governments, through the agreements, preventing them from exercising powers available to them In their national constitutions.

Domestic regulations, Including environmental ones, are precisely the targets of investor-rights documents like the MAI, since regulations do affect the capacity of corporations to engage in profit-generating activities. "Investment protection" actually means the removal of regulatory controls on corporate activity. The MAI is therefore the latest In the International de-regulation initiatives.

In the environmental field, there has been a progressive undermining of domestic environmental regulation over the past ten years through the Canada-US Free Trade Agreement, NAFTA, and the 1994 GATT. This has occurred despite consistent public opinion polls showing very high levels of public support for strong environmental laws, Including in areas where Canadian governments refuse to regulate, such as climate change Issues.'

Given this new international de-regulation initiative, the MAI, It is important to review how it may affect environmental regulation In Canada. From the perspective of Canada and many Southern countries, It Is Important to recall that resource management Is a fundamental element of both environmental protection and community stability.

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'For a review of the staggering pace of removal of environmental regulation in Ontario, see Environmental Commissioner of Ontario, Annual Report, 1996: Keep the Doors Open to Better Environmental Decision Making, Toronto, April 1997. At the federal level, we note the failure to keep 1993 Red Book commitments on the Canadian Environmental Protection Act and an Endangered Species Act as well as a sorry performance on *climate* change,. Both levels of government hae Implemented large cuts In budget and staff on the environmental ministries.